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Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

BURT, BURT & RENTZ
RETIREMENT PENSION TRUST, et al.,

Petitioners,

VS.

DOUGHERTY COUNTY TAX ASSESSORS,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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38 pp

QUESTIONS PRESENTED

I. Whether the failure of the State of Georgia and Respondent to tax an unreturned 1,000 acre reservoir of submerged land owned by a public utility for its hydroelectric dam in Dougherty County, Georgia constitutes a violation of Petitioners' rights under the Georgia Constitution, the equal protection clause of the United States Constitution and the Petitioners' right to rely on Susquehanna Power Co. v. State_Tax Commission of Maryland, 283 U.S. 291, 51 S. Ct. 434?

II. Whether the failure of the State of Georgia and Respondent to tax the unreturned permanent easements of Colonial Pipeline Company, a public utility, traversing the front of Petitioners', (taxpayers') properties and all property in Dougherty County, Georgia requiring Petitioners to pay the ad valorem tax on said permanent easements constitutes a violation of Petitioners' rights under the Georgia Constitution and the equal protection clause of the United States Constitution?

III. Whether the State of Georgia and Respondent intentionally and systematically allowed public utilities to value their own properties, real and personal in Dougherty County, Georgia by "rubber-stamping" their annual returns without any real investigation or appraisal constitutes a violation of Petitioners' rights under the Georgia Constitution and the equal protection clause of the United States Constitution?

PARTIES

The parties are Petitioners Burt, Burt & Rentz, Retirement Pension Trust, Pace Burt, Inc. and Westover Apartments, L.P. Pursuant to Rule 29.6, there is no parent or publicly held company owning 10% or more of the above parties.

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OPINIONS BELOW

The opinion of the Georgia Court of Appeals, (Case No. A02A0325-2002) is included in Appendix 1-8. The Court's Order denying reconsideration is annexed hereto at App. 9.

The Georgia Supreme Courts' Order denying certiorari is annexed hereto at App. 10. The Courts' Order denying reconsideration is annexed hereto at App. 11.

JURISDICTION

The judgment of the Court of Appeals was entered on July 1st, 2002, (App. at 1). The Court of Appeals denied Petitioners' motion for reconsideration on July 23rd, 2002, (App. at 9). The Georgia Supreme Court denied Petitioners' application for certiorari on October 15th, 2002, (App. at 10) and their motion for reconsideration on November 22nd, 2002, (App. at 11).

This petition for certiorari is filed within ninety (90) days of October 15th, 2002.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

I. United States Constitution Amendment XIV, §1:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof,

are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

II. Article 1, Sec. 1, Par. 2 the Georgia Constitution:

Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.

III. Article VII, Section 1, Par. 111(a), of the Georgia Constitution:

All taxes shall be levied and collected under laws and for public purposes only. All taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax...

IV. O.C.G.A. Sec. 48-5-306(a) states in part:

The Board shall see that all taxable property the county is assessed and returned at its fair market value and that fair market value as between the individual taxpayers are fairly and justly equalized so that each taxpayer shall pay as nearly as possible only his proportional share of taxes.

V. O.C.G.A. Sec. 48-5-511(b) states in part:

The returns of each public utility shall be in writing and sworn to under oath by the Chief-Executive Officer to be a just, true and full return of

the fair market value of the property of the public utility without any deduction for indebtedness. Each class or species of property shall be taxed like all other property under the laws of this state...

VI. O.C.G.A. Sec. 48-5-3:

All real property including, but not limited to, leaseholds, interests less than fee, and all personal property shall be liable to taxation and shall be taxed, except as otherwise provided by law. Liability of property for taxation shall not be affected by the individual or corporate character of the property owner or by the resident or nonresident status of the property owner.

VII. O.C.G.A. Sec. 48-2-18(d):

Within 30 days after receipt of the proposed digest of assessments, the county board of tax assessors shall make the final assessment of the property in question and provide notice to the taxpayer. Such notice and any appeal therefrom shall be accomplished as is provided by Code Sections 48-5-306 and 48-5-311. In the event of an appeal, the department shall, upon request of the local board of tax assessors with any and all technical assistance available from the resources of the department, including without limitation expert testimony by the employees of the department.

VIII. O.C.G.A. 48-5-299 states in part:

It shall be the duty of the county board of tax assessors to investigate diligently and to inquire into the property owned in the county for the purpose of ascertaining what real and personal property is subject to taxation in the county and to

require the proper return of the property for taxation. The board shall make such investigation as may be necessary to determine the value of any property upon which for any reason all taxes due the state or the county have not been paid in full as required by law.

STATEMENT OF CASE

Petitioners, as taxpayers, appealed to Dougherty Superior Court the decision of the Board of Equalization with respect to the ad valorem valuations of their properties and the denial of the following legal contentions of Petitioners:

> "Said Board's valuation is in excess of the present market value of said property in violation of O.C.G.A. Sec. 48-5-306 and Sec. 48-5-2.
>
> Said Board's valuation and assessment was not uniformly made with other real property included in the digest and the assessment is without respect to the equalization of value in violation of the Georgia Constitution, Article 7, Section 1, Paragraph III.
>
> Property of the same class as real estate is not taxed (ad valorem) by the Dougherty County Board of Tax Assessors in violation of the Georgia Constitution, Article 7, Section1, and Paragraph III.
>
> Significant real estate and interests in real estate in Dougherty County are not returned or assessed in violation of O.C.G.A. Sec. 48-5-3 and Sec. 48-5-306." (Supplemental R. 15, 18 & 21.)

These grounds were the same in Petitioners' appeal

to Respondent and the Board of Equalization. (Supplemental R. 8, 10 & 12.)

Upon completion of depositions and securing affidavits, Petitioners filed their Motions for Summary Judgment supported with their brief and Respondent filed their Cross-Motion for Summary Judgment, which was granted by the Trial Court, and denied Petitioners' Motion for Summary Judgment. (R. 341) This Order held, inter alia, that "an individual taxpayer may not challenge the State Revenue Commissioner's decisions regarding, valuation and assessment of utility property". (R. 342)

Within thirty (30) days, Petitioners duly filed their Notices of Appeal to the Georgia Court of Appeals from said Order granting Respondent's Motion for Summary Judgment and denying Petitioners' Motion for Summary Judgment in each of the three cases. (R. 1, 4 & 7)

The above three tax appeals were consolidated as each involves the same legal issues. (R. 26, 348)

Each appeal involves vacant land, which have a permanent gas pipeline easement of Colonial Pipeline Company through the property. (R. 30-32)

The uncontradicted evidence shows that the Georgia Department of Revenue and Respondent do not assess and tax Colonial Pipeline's permanent easements through Dougherty County or any other public utility's easement. (R. 54, 55, 172, 173, 174, 175, 176 & 177)

The uncontradicted evidence shows the Georgia Department of Revenue and Respondent do not tax some 1,000 acres of submerged land owned by Georgia Power Company in Dougherty County as a reservoir for their hydroelectric dam. (R. 54, 55, 63, 64, 73, 74, 75, 76, 77, 80, 81, 84, 173, 175, 176, 178 & 182)

The Applicant's evidence before the Court is as follows:

(1) Deposition of William M. Watson, Chief Appraiser for Respondent, including Exhibits. (R. 44)

(2) Deposition of Joseph Slappey, Public Utility Valuation Manager for the State of Georgia Department of Revenue, including Exhibits. (R. 161)

(3) Affidavit of Cliff Owens a licensed certified general real estate appraiser with the following designation: MSA (#8765) National Association of Master Appraisers. (R. 38)

(4) Affidavit of Hilliard P. Burt, Attorney, State Bar #097700.

In response to a notice to produce, Mr. Watson brought to his deposition various tax returns his office received from the Georgia Department of Revenue for the year 2000 with respect to utilities who had property in Dougherty County. Exhibit One to Watson's deposition was the return of Colonial Pipeline Company, which showed 17.76 miles of eight-inch pipe and 16.44 miles of twenty-inch pipe. (R. 54, 55 & 97)

None of the permanent easements or the right-of-ways of Colonial Pipeline Company in Dougherty County were returned. (R. 55) Mr. Watson's office made no investigation of the real estate values or personal property shown on the return from the Department of Revenue and accepted the return as filed. (R. 55 & 56) Mr. Watson has been in tax office for some 19 years but to his knowledge, the tax office has never challenged or turned down any valuation shown by Department of Revenue although he understood his office had the authority to question the return. (R. 46 & 56) His office takes the public utility returns, applies the millage and sends the utility a tax bill along with other property owners. (R. 56) Another pipeline in Dougherty County is Dixie Pipeline who fails

to return any of its right-of-ways, which applies to BellSouth. (R. 70 & 71) Mr. Watson did not know whether any of the railroads were paying taxes on their right-of-ways. (R. 72)

Exhibit Two is attached to Watson's deposition was a letter delivered to Mr. Watson on March 29th, 2000 signed by attorneys H. P. Burt and William T. Divine requesting Respondent to assess and tax substantial acres of submerged land owned by Georgia Power Company in the Georgia Power Reservoir in Dougherty County which was not taxed and required to be taxed under a cited decision of the U.S. Supreme Court. (R. 100) The decision of Respondent was to forward this letter to the Georgia Department of Revenue, who never responded. (R. 63, 64 & 99)

Exhibit Three is the tax return of Georgia Power Company for the year 2000. (R. 64, 65, 66 & 102) The return shows 963.10 miles of wire in Dougherty County but no real estate right-of-ways and all values placed on the return by Georgia Power Company were accepted by the Georgia Department of Revenue and Respondent did not attempt to verify these values. (R. 64, 65, 66, 67 & 102)

Mr. Watson produced a plat from his office showing Georgia Power Company's right-of-ways are a hundred-feet wide. (R. 88)

Exhibit Four was the license Georgia Power Company has from the Federal Energy Regulatory Commission to operate this reservoir 1400 acres of navigable waters for their dam. (R. 67, 68, 69 & 128)

Mr. Cliff Owens, a licensed certified general real estate appraiser, gave an affidavit verifying that the 30-foot permanent easement of Colonial Pipeline Company had a fair market value of 70% of the fair market value of said 30 feet. (R. 39 & 40) Mr. Owens' opinion given as to Colonial Pipeline Company applies to Georgia Power Company,

Bell South and Dixie Pipeline Company. (R. 41) Further that the easements he referred to are for general transmissions and are not accessible by the property of owner. (R. 41) Further he gave a basic value of submerged or wetland type lands. (R. 41 & 42)

Hilliard Burt's affidavit verified Colonial Pipeline Company's 30-foot easement running through the front of properties involved in Actions 00CV2369-1 and 00CV2390-1 on North Westover Boulevard and said Petitioners have for the year 2000 and before, paid the ad valorem taxes on said 30 feet and Respondent has not required Colonial to pay ad valorem taxes on the fair market value of said permanent easement. (R. 31 & 32) Further, that Colonial's permanent easement through the rear of certain lots in Pretoria Acres is a minimum of 50 feet wide, which Petitioners pay the tax for the year 2000 and before and Respondent has not required Colonial to pay ad valorem on said easement. (R. 32) Further, he verified Georgia Power Company had acquired title to real estate or for overflow rights and the acreage is in excess of 1,000 acres embraced in their dam's water reservoir of submerged land. (R. 33)

The testimony of Mr. Slappey who is "public utility manager for the State of Georgia Department of Revenue" was so shocking in disbelief that a state office, as important as this was so ill-equipped to determine what properties multiple public utilities owned, their market value and for practical purposes "rubber-stamped" their returns 100%. (R. 172, 173, 175, 176, 177 & 189)

Suffice it to say that Mr. Slappey's testimony acknowledged that his department does not tax right-of-ways and permanent easements nor do they tax some 1,000 acres of submerged land of Georgia Power Company in Dougherty County. (R. 172, 173, 177, 178, 180 & 181) He testified he had access to financial statements of these

utilities to determine a "ball park" figure as to assets in Georgia, although he accepted values of real estate and personal property as returned by the utilities without any appraisal of the fair market value of their real estate or personal property. (R. 177, 179, 184, 185, 186, 187, 188 & 189) This financial information is not sent to County Tax Assessors. (R. 189) He made all the decisions in his office with two assistants and they did no fieldwork out of his office. (R. 170 & 171)

The financial information Slappey receives is for the entire State of Georgia. (R. 186 & 187)

He admitted he accepts the book value of real estate at what the utility paid for it even though it "might have been 50 years ago". (R. 179) He testified, "it stays at that value until it's disposed of". (R. 179)

In the teeth of the above incontrovertible evidence, the trial court denied Petitioner's motion for summary judgment and granted Respondent's motion for summary judgment, which was affirmed by the Georgia Court of Appeals.

REASONS FOR GRANTING THE WRIT

A.

The Decision below is contrary to and in direct conflict with the settled law as established by this Court in Susquehanna Power Co. v. State Tax Commission of Maryland, 283 U.S. 291, 61 S. Ct. 434, 75 L. Ed 1042.

B.

The Decision below is contrary to the settled law of this Court and completely undercuts the Constitutional Foundation of the taxing power of a state which has for its purpose the distribution of the burden of taxation evenly

and equitable as set forth in Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed 340 and Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia, 488 U.S. 336, 109 S. Ct. 633.

C.

The Decision below judicially clothes public utilities with an illegal tax exemption and immunity, which arbitrarily discriminates against all private taxpayers in Georgia and denies them the equal protection of the law. Thus private taxpayers in Georgia are unlawfully forced to significantly subsidize public utilities every year.

D.

The constant escalation of property values of private taxpayers by Respondent while allowing public utilities property values to remain at "purchased book value" exacerbates the gross disparity of assessed values between the two resulting in an aggravated denial of the equal protection of the law guaranteed all private Georgia taxpayers by the Constitution of Georgia and the Fourteenth Amendment to the U.S. Constitution.

I. WHETHER THE FAILURE OF THE STATE OF GEORGIA AND RESPONDENT TO TAX AN UNRETURNED 1,000 ACRE RESERVOIR OF SUBMERGED LAND OWNED BY A PUBLIC UTILITY FOR ITS HYDROELECTRIC DAM IN DOUGHERTY COUNTY, GEORGIA CONSTITUTES A VIOLATION OF PETITIONERS' RIGHTS UNDER THE GEORGIA CONSTITUTION, THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION AND THE PETITIONERS' RIGHT TO RELY ON SUSQUEHANNA POWER CO. V. STATE TAX COMMISSION OF MARYLAND, 283 U.S. 291, 51 S. CT. 434?

The precise question of whether submerged lands of a reservoir used by a power company to generate electricity under a federal license is subject to ad valorem taxes was answered in Susquehanna Power Co. v. State Tax Commission of Maryland, 283 U.S. 291, 51 S. Ct. 434, the Court held in headnote 1: "Lands privately owned are subject to state taxation though lying under navigable waters" and in headnote 5: "Submerged lands of power company, constructing dam across navigable river under Federal license, held subject to state taxation". The Decision held: "Lands privately owned are subject to state taxation, although lying under navigable waters. Central R. Co. v. Jersey City, 209 U.S. 473, 28 S. Ct. 592, 52 L. Ed. 896, Leary v. Jersey City, 248 U.S. 328, 39 S. Ct. 115, 63 L. Ed. 271..."

Regardless of the above decision, Georgia Power Company owns a 1,000 acres of submerged land in Dougherty County and is no different from any other taxpayer and cannot escape paying ad valorem taxes on this valuable acreage, which brings a free inventory of water to their generators.

The Georgia Attorney General has previously ruled that land under power reservoirs is indeed taxable. "Where a power company's property is located in this state and is a part of its reservoir used for producing electricity distributed to its customers, none of whom are Georgia residents, the company is a power company or a hydroelectric power company as is required by this section to file its annual property tax return with the commissioner. 1968 Op. Att'y Gen. No. 65-155".

The Supreme Court held in 1990 that an amendment to the law, (O.C.G.A. Sec. 48-2-18), in 1988 made it crystal clear that the Respondents were "to play a new role in the taxation of utilities" and had the right to adopt or make a different assessment with respect to public utilities, than made by the State Revenue Department.

In Telecom USA, Inc. v. Collins, 260 Ga. 362, 393 SE 2d 235, the Court said through Justice Clarke the following:

> "The real 'change in the method of assessment' is found in OCGA § 48-2-18(d), in which the counties are given thirty days after the receipt of the proposed digest to make a 'final assessment' and provide notice to the taxpayer. We find no statutory mention of the county's right to make a 'final assessment' before the 1988 amendments. We note also that the legislature described assessment issued by the Commissioner as a 'proposed assessment' and the assessment by the county board of tax assessors as the 'final assessment'.
>
> Thus, the plain language of the statute, its caption, and its history, all indicate that the legislature intended for the counties to play a new role in the taxation of utilities. The essence of the counties new role is the right to make an assessment that is different from the Commissioner's 'proposed assessment' and to deal with appeals from its 'final assessment'."
>
> "When the county's 'final assessment' is an independent assessment-one that is not based solely on the Commissioner's 'proposed assessment' - the appeal should proceed in that county because the county, rather than the Commissioner or the Board, has aggrieved the utility."
>
> As demonstrated by the Telecom USA, Inc. case, supra, there can be no question that Respondents had the mandated duty to make the final assessment against each utility and prevent these utilities from escaping their just ad valorem taxes.

In the six plus years Mr. Slappey has been Georgia Public Utility Valuation Manager, Respondent has never challenged any of the values placed on the returns by a public utility. (R. 174)

This failure on the part of Respondent is heightened by the fact the undersigned counsel served a written notice on Respondent a year earlier on March 29, 2000 requesting Respondent to tax said submerged lands.

The Court of Appeals decision refused to consider the taxability of said 1,000 acres of submerged land or the holding in the *Susquehanna Power Co.* case, supra

II. WHETHER THE FAILURE OF THE STATE OF GEORGIA AND RESPONDENT TO TAX THE UNRETURNED PERMANENT EASEMENTS OF COLONIAL PIPELINE COMPANY, A PUBLIC UTILITY, TRAVERSING THE FRONT OF PETITIONERS', (TAXPAYERS') PROPERTIES AND ALL PROPERTY IN DOUGHERTY COUNTY, GEORGIA REQUIRING PETITIONERS TO PAY THE AD VALOREM TAX ON SAID PERMANENT EASEMENTS CONSTITUTES A VIOLATION OF PETITIONERS' RIGHTS UNDER THE GEORGIA CONSTITUTION AND THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION?

Notwithstanding right-of-ways and easements in real estate are taxable interests in property, the Georgia Department of Revenue and Respondents have systematically and consistently refused to tax same.

In Delta Air Lines, Inc. v. Coleman, 219 Ga. 12, 131 SE 2d 768, the Court held:

> "In this state there can be several separate and distinct estates in the same parcel of land, and Code Sec. 92-104 requires the owner of any estate

less than the fee to return it for taxes and pay taxes on it as on other property".

To same effect see: Martin v. Liberty City Board of Tax Assessors, 152 Ga. App. 346, 262 SE 2d 609. Henson v. Georgia Industrial Realty Company, 220 Ga. 857, 142 SE 2d 219.

The current code section is O.C.G.A. Sec. 48-5-3 reads:

> "All real property including, but not limited to, leaseholds, interests less than fee, and all personal property shall be liable to taxation and shall be taxed except as otherwise provided by law. Liability of property for taxation shall not be affected by the individual or corporate character of the property owner or by the resident or nonresident status of the property owner".

O.C.G.A. Sec. 48-5-6 states:

> "All property shall be returned at its fair market value".

84C. J.S. Sec.441 taxation section entitled, "Rights, Privileges and Easements, in realty states in part:

> "A pipeline underlying the lands of several proprietors, such, for example, as is used in conveying petroleum, has been held taxable as real estate. A right-of-way for maintenance of electrical lines over land has been held to be taxable as land, although poles and wires maintained on a right-of-way in gross have been considered personalty".

Also, in section #441 states in part:

> "the value of land must be considered as depreciated by easements with which it is burdened".

These utilities have miles and miles of valuable real estate right-of-ways and easements in Dougherty County, which are not returned enabling them to illegally escape paying their rightful share of taxes which of necessity

forces Petitioners and other taxpayers to be overtaxed and to carry the utilities tax burden.

This is tantamount to Respondent granting public utilities an illegal exemption, which is a clear violation of Petitioners' rights under the equal protection clause of the Georgia and U.S. Constitution.

Again, the Court of Appeals decision failed to consider the taxability of permanent easements and right-of-ways nor the statute and cited decisions requiring these property interests to be taxed. The decision refused to acknowledge that Mr. Slappey admitted the Revenue Department did not tax utilities' permanent easements and right-of-ways.

III. WHETHER THE STATE OF GEORGIA AND THE RESPONDENT INTENTIONALLY AND SYSTEMATICALLY ALLOWED PUBLIC UTILITIES TO VALUE THEIR OWN PROPERTIES, REAL AND PERSONAL IN DOUGHERTY COUNTY, GEORGIA BY "RUBBER-STAMPING" THEIR ANNUAL RETURNS WITHOUT ANY REAL INVESTIGATION OR APPRAISAL CONSTITUTES A VIOLATION OF PETITIONERS' RIGHTS UNDER THE GEORGIA CONSTITUTION AND THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION?

This Court unanimously held the disparity of assessments between properties of the same class "violated the Equal Protection Clause". In Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336, 102 L. Ed 2d 688, 109 S. Ct. 633 (1989).

Portions of this case are as follows:

> "Chief Justice REHNQUIST delivered the opinion of the Court."
>
> "The West Virginia Constitution guarantees to its citizens that, with certain exception, 'taxation

shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxes in proportion to its value...' Art, X, § 1. The Webster County tax assessor valued petitioners' real property on the basis of its recent purchase price, but made only minor modifications in the assessments of land which had not been recently sold. This practice resulted in gross disparities in the assessed value of generally comparable property, and we hold that it denied petitioners the equal protection of the laws guaranteed to them by the Fourteenth Amendment."

In Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 340, it was held: "1. Intentional and arbitrary assessment of the property of one owner for taxation at its true value, in accordance with the State Constitution and laws, while all other like property is systematically assessed much lower, is a violation of the equal protection of the laws. 2. The owner aggrieved by this discrimination is entitled to have his assessment reduced to the common level, since by no judicial proceeding can he compel reassessment of the great mass of such property at its true value as the law requires." See Phillips Petroleum Co. v. Townsend, (5th Cir), 63 F 2d 293; Georgia Railroad Co. v. Wright, 125 Ga. 589, 601, 604, 43 S.E. 52; Bohler v. Callaway, 267 U.S. 479, 45 S. Ct. 431, 69 L. Ed. 745.

To same effect see.:

Greene v. L & I. R. Co., 244 U.S. 499, 501, 37 S. Ct. 673, 61 L. Ed. 1280

Montgomery v. Suttles, 191 Ga. 781, 13 SE 2d 781, (1941)

Hutchins v. Howard, 211 Ga. 830, 89 SE 2d 183

Lott Investment Corp. v. City of Waycross, 218 Ga. 805, 130 SE 2d 741.

In Colvard v. Ridley, 218 Ga. 490, 128 SE 2d 732 (1962), the taxpayers alleged that all realty was taxed by appraisal while "they accepted the value of all tangible personal property, other than household and kitchen furniture, at whatever value it was returned for by each separate taxpayer without making any investigation or inquiry whatsoever as to its fair market value".

The Court held: "Without here repeating the allegations of the petition, it is sufficient to say they show that the assessments made by the board of tax assessors are null and void for want of uniformity in fixing taxable values as between different types of taxable property of the same class".

Similarly, the Court in Lott Investment case, supra, held the failure to tax personal property rendered the tax on real estate to be void as real and personal property were of the same class.

In Ogletree v. Woodward, 150 Ga. 691, 105 SE 243, the Court held:

> "Under the law of this state all property must be returned at its fair market value. No distinction, it will be observed, is made between the property owned by public utility corporations and individuals".

From a practical standpoint, the Georgia Department of Revenue and Respondents accepted annually the values of not only personal property of public utilities but also the values of real estate per their return. This practice must be held void per Colvard Case, supra, and common sense.

The use of public utilities' financial information by the Revenue Department does not and cannot establish current fair market value. Its manager admitted they accepted book value of real estate showing cost even if "fifty years ago". Curiously this financial information is of such little value that it is never forwarded to Respondent.

who are required to make the final determination of market value.

Regardless of what insight into value this financial information gives, it is clear Respondent inspect and appraise Petitioners' property as opposed to solely accepting Petitioners' financial information which practice must fail as lacking uniformity and equal treatment.

The methodology of assessing property used by the Georgia Department of Revenue and Respondent to tax public utilities properties is patently unconstitutional as designed to operate unequally and cannot square with the decisions of this Court and the Supreme Court of Georgia and cited Georgia statutes.

The Court of Appeals decision in one broad brush simply adopted and sanctioned the Revenue Department's so-called "ball park" valuations by looking at the utilities' financials, which embrace the entire state of Georgia.

Clearly, this policy cannot comport with the mandates of this Court, the Supreme Court of Georgia and the following statute as to the contents in the tax returns of public utilities: "Each class or species of property shall be separately named and valued as far as practicable and shall be taxed like all other property under the laws of this state". O.C.G.A. Sec. 48-5-511(b), supra.

CONCLUSION

Public utilities are quasi-monopolies and occupy a strong force of power in Georgia and the Revenue Department and Respondent are engaging in an intentional practice of allowing them the right to not only evalue their own properties, but unilaterally decide to omit certain properties without any purposeful review by the Revenue Department and Respondent who rubber-stamp this practice.

This unconstitutional policy continues to escalate each year as utilities "booked assets" increase in value and the number of public utilities increase. All to the detriment of private taxpayers.

Petitioners' valid and legitimate appeal has been given short shrift by the Georgia Court of Appeals resulting in a denial of this Court's mandate of equal protection of the laws. There is no legal justification for the Court of Appeals' decision, which glossed over the critical issues raised by Petitioners.

Petitioners pray that this petition for certiorari be granted.

Dated: January 7, 2003

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App. 1

IN THE COURT OF APPEAL OF THE
STATE OF GEORGIA

FIRST DIVISION

BURT, BURT & RENTZ RETIREMENT PENSION TRUST et al.,	A02A0325
Plaintiffs and Appellants,	
v.	
DOUGHERTY COUNTY TAX ASSESSORS,	
Defendants and Respondents.	

The three appellants in this case are Dougherty County property owners[1] ("Property Owners"), who challenged the County Tax Assessors' alleged failure to properly assess real and personal property interests held by utility companies, and to uniformly assess other real and business personal property located in the county. After the Dougherty County Board of Equalization denied their claims, the Property Owners appealed to the Superior Court. The Superior Court denied the Property Owners' motion for summary judgment and partially granted the County Tax Assessors' motion for summary judgment.

[1] The Appellants are Burt, Burt & Rentz Retirement Pension Trust, Pace Burt, Inc., and Westover Apartments, L.P. This appeal originated from three separate actions that were consolidated by the superior court.

The Property Owners filed the instant appeal, and for reasons that follow, we affirm.

1. Before turning to the merits of the Property Owners' appeal, we must address two impediments to review posed by their appellate brief. First, the Property Owners enumerate nine errors, but have not shown how they preserved these nine asserted errors for review. It is not our function to cull the record to insure that the Appellants properly raised the arguments below. Court of Appeals Rule 27 (a) (1) clearly places that burden on Appellants. Second, notwithstanding their nine enumerated errors, the Property Owners' brief contains only two sections of argument. Court of Appeals Rule 27 (c) (1) requires that arguments "follow the order of the enumerations of error, and shall be numbered accordingly."[2] The rule is not a mere formality, but is intended to assist the Court in addressing the individual merits of each enumerated error. By failing to separately address each assertion and not showing how they were preserved, the Property Owners have seriously hampered our review of their appeal. These deficiencies are all the more troubling because we granted the Property Owners' motion to exceed the 30-page limit imposed by the Court of Appeals Rule 23 (e). Though we will address the merits of the arguments raised, the Property Owners are wholly responsible for any claim that we have failed to sufficiently address in each of their nine enumerated errors.

2. One of the utility companies at issue is Colonial Pipeline Company, ("Colonial"), which owns utility easements on property located in Dougherty County. Most of Colonial's easements are 30 feet wide, and the company has 34.2 miles of pipe, two-meter stations, and other business personal property, but does not separately list the easements. The Property Owners presented affidavits establishing that the easements have a value equal to 70 percent of the value of the underlying fee simple property and that Colonial has easements on property owned by the Property Owners.

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[2] (Emphasis supplied.)

Another of the utilities at issue is Georgia Power Company. Georgia Power has utility easements in the county that are 100 feet wide. In addition, Georgia Power owns over 1000 acres of submerged land in the county. Like Colonial, Georgia Power lists its lines, wires, and other business personal property on its Revenue Department tax returns, but does not separately list the easements or the submerged land.

In assessing utility companies such as Colonial and Georgia Power for the property they own in Dougherty County, the County Tax Assessors rely on valuations reported by the Revenue Department. The Revenue Department's Public Utility Valuation Manager, Joseph Slappey, testified at length about the method it uses to value utility company property. According to Slappey, a utility company is required to annually supply the Revenue Department with a complete set of its financial records. His office reviews those records and determines "an overall value of the company as if somebody were buying it". The Revenue Department then apportions the overall value of the utility among the various counties "by the [company's] original investment in that tax jurisdiction". Although a utility company lists individual assets in each county on its returns, the Revenue Department is primarily concerned that the total value of those assets is consistent with the Department's independent valuation calculated under this method. Slappey testified that the Revenue Department considers a utility company's "gross investment" in a county, rather than the value of "each individual item", because his office does not have the expertise required to independently appraise much of the specialized property, such as pipe and meter stations, owned by the utilities.

Dougherty County's Chief Appraiser acknowledged that his office has the authority to question the valuations approved by the Revenue Department, but "the normal practice is that the State does the tax returns" and his office accepts them without further investigation.

The County Tax Assessors also give deference to the business personal property listed on the returns of businesses. The county has approximately 6000 business personal property owners, and, other than randomly selecting approximately 30 returns for audit each year, the County Tax Assessors accept a taxpayer's return without significant scrutiny if there is no "large disparity" from the previous years' return.

In addressing the parties' cross-motions for summary judgment, the court ruled that, under Bd. Of Tax Assessors of Wayne County v. Clary,[3] the Property Owners were precluded from challenging the "State Revenue Commissioner's decisions regarding valuation and assessment of utility property".[4] The court also found that the County Tax Assessors were entitled to summary judgment on the Property Owners' challenge to the alleged disparate treatment of business personal property and real property because the State Revenue Commissioner was entitled to use reasonable means to assess the property. Finally, the court concluded that a factual issue remained concerning the Property Owners' claim that the County Tax Assessors placed an excessive value on their property.

As best we can discern from the Property Owners' brief, they raise three arguments concerning the trial court's order. First, the Property Owners argue that the trial court erred in precluding them from challenging the County Tax Assessors' practice of relying entirely on the Revenue Department's assessments. Second, the Property Owners argue that the County Tax Assessors are improperly accepting the Revenue Department's valuation of utility property without independently examining those valuations. And third, the Property Owners argue that the County Tax Assessors should give greater scrutiny to business personal property returns to ensure that taxpayers accurately list and value the property they own.

(a) Pretermitting whether the Property Owners should have been allowed to challenge the County Tax

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[3] 161 Ga. App. 828, 830 (3) (290 SE2d 110) (1982).

[4] (Punctuation omitted).

Assessors' practice of relying entirely on the Revenue Department's assessments of utility property, we conclude that this practice is authorized under Georgia law. This issue was addressed by our Supreme Court in *Telecom USA, Inc. v. Collins*,[5] a case relied on by the Property Owners. In *Collins*, the Court recognized that, before 1988, Georgia's Revenue Code made the State Revenue Commissioner solely responsible for assessing a utility's taxable assets.[6] In 1988, however, the legislature amended OCGA § 48-2-18 to permit counties to "play a new role in the taxation of utilities. The essence of the counties' new role is the right to make an assessment that is different from the Commissioner's proposed assessment and to deal with appeals from its final assessment".[7]

The Property Owners quote *Collins* for the proposition that County Tax Assessors are required to modify the assessments in this case. They ignore the rest of the Court's decision, however, in which it concluded that, under the 1988 amendments, "the county boards of tax assessors may either *adopt* or modify the Commissioner's proposed assessment before issuing a final assessment".[8] In other words, "counties may rely entirely on the Commissioner's proposed assessment in issuing the final assessment".[9]

In this case, the uncontroverted evidence showed that the County Tax Assessors opted to adopt the Commissioner's proposed assessments, as permitted by the Supreme Court's decision in *Collins*.[10] "The object of the assessors must be to determine the fair market value of the property subject to taxation in the county and the methods employed may be varied if the object is attained."[11] The methods used by the Revenue

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[5] 260 Ga. 362 (393 SE 2d 235) (1990).

[6] See id. At 364-365(1).

[7] (Punctuation omitted.) Id. At 365.

[8] (Punctuation omitted, emphasis supplied.) Id. at 365-366.

[9] (Punctuation omitted.) Id. at 366.

[10] *See id.*

[11] (Punctuation omitted.) Rogers v. Dekalb County Bd. Of Tax Assessors, 247 Ga. 726, 728 (2)(279 SE 2d 223)(1981).

Department, and the results adopted by the County Tax Assessors, accomplished this purpose. Though each individual utility company asset was not separately assessed under the Revenue Department's formula, the overall fair market value of each company's combined assets in the county was assessed. It follows that the superior court did not err in upholding the County Tax Assessors' right to adopt the Revenue Department's proposed assessments of the utility companies, and summary judgment was appropriate on this issue.[12]

(b) We also conclude that the superior court properly granted summary judgment to the County Tax Assessors on the Property Owners' claim that personal property and real property were not uniformly assessed because the County Tax Assessors were not properly scrutinizing personal property returns of businesses. The Property Owners argue that "[t]he bottom line is that [the County Tax Assessors] are required to utilize an investigative process to uncover all business personal property and thereafter to have a staff or a mechanism to determine its fair market value".

The Property Owners' argument places a greater burden on the County Tax Assessors than is imposed by law:

> It is the duty of the board of tax assessors to see that all taxable property within the county is assessed and returned at its just and fair valuation and that valuations as between individual taxpayers are fairly and justly equalized. This does not require the tax assessors to use any definite system or method, but demands only that the valuations be just and that they be fairly and justly equalized among the individual taxpayers according to *the best information obtainable.*[13]

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[12] See OCGA § 9-11-56(c).

[13] (Punctuation omitted, emphasis supplied.) Coastal Equities, Inc. v. Chatham County Bd. Of Tax Assessors, 201 Ga. App. 571, 572 (1)(411 SE 2d 540)(1991).

Under this rule, tax assessors are:

> not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. To hold otherwise would be to subject the essential taxing power of the State to an intolerable supervision, hostile to the basic principles of our Government and wholly beyond the protection, which the general clause of the Fourteenth Amendment was intended to assure.[14]

The Property Owners have not shown that the County Tax Assessors' method of assessing business personal property runs afoul of these standards. Rather, the evidence shows that the County Tax Assessors are using the best information obtainable to determine the fair market value of business personal property. The Assessors use methods mandated by the State Appraisal Manual to arrive at the fair market value of business inventory, equipment and furniture, and the Property Owners have presented no evidence challenging the propriety of these methods.

Furthermore, the County Tax Assessors receive approximately 6000 business personal property returns annually, yet the office responsible for processing these returns has only seven employees - a manager, one appraiser, three auditors and two clerks. Every return is checked against the previous year's return and sometimes the returns of similar companies. If an inconsistency is found, the staff audits that return. In addition, the County Tax Assessors subject a number of returns to random audits.

Undoubtedly, there are taxpayers who fail to properly report every item of business personal property they own. But the law does not require the County Tax Assessors to implement a procedure that will reveal every

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[14] (Punctuation omitted.) Rogers, supra at 729>

such instance. To impose this standard would require the assessors to perform an impossible task.[15] They cannot possibly inventory the stock and equipment of every retailer and other business to insure that they have all reported 100 percent of their property. Thus, that level of information is not obtainable. Because the undisputed evidence shows that the County Tax Assessors are using the best information that is obtainable, the trial court properly granted partial summary judgment to the Appellees on this claim.[16]

Judgment affirmed. Pope, P.J., and Barnes, J., concur.

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[15] See Rogers, supra.

[16] See id.; Coastal Equities, supra.

Court of Appeals
of the State of Georgia

ATLANTA, JULY 23, 2002

The Court of Appeals passed the following order

Case No. A02A0325

BURT & BURT, & RENTZ, RETIREMENT PENSION TRUST, ET AL V. DOUGHERTY COUNTY TAX ASSESSORS

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 23, 2002

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk,

/s/ William L. Martin

App. 10

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

DATE: October 15, 2002

Hilliard Pace Burt
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Case No. S02C1822

BURT, BURT & RENTZ, PENSION TRUST et al. v. DOUGHERTY COUNTY TAX ASSESSORS

COURT OF APPEALS CASE NO. A02A0325

The Supreme Court today denied the petition for certiorari in this case.

/s/ Sherie M. Welch
Clerk

SUPREME COURT OF GEORGIA

Case No. S02C1822 Atlanta, November 22, 2002

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

BURT, BURT & RENTZ, PENSION TRUST et al. v. DOUGHERTY COUNTY TAX ASSESSORS

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Sherie M. Welch
Clerk